

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, the arguments and the brief of the respondent, the Appeals Board finds for purposes of preliminary hearing that the application for review filed by the respondent should be dismissed. This is an interlocutory appeal from a preliminary order which was within the jurisdiction of the Administrative Law Judge to enter. This appeal does not involve an issue considered jurisdictional and subject to review by the Appeals Board pursuant to K.S.A. 44-534a(2).

A preliminary hearing was held on November 8, 1995 before the Administrative Law Judge. The testimony of claimant was presented and medical report exhibits were introduced regarding his claimed bilateral foot conditions. The medical exhibits indicated that the etiology of claimant's foot problems was medically unknown. Respondent, by cross-examination of claimant, challenged claimant's veracity regarding his injuries, their extent, and his activities after leaving the employ of respondent. The central issue before the Administrative Law Judge at the Preliminary Hearing of November 8, 1995 was whether claimant's current complaints to his bilateral feet were injuries resulting from a work-related accident or, instead, were simply non-work related problems of an unknown nature. At the conclusion of the hearing, the Administrative Law Judge issued an Order for an independent medical examination pursuant to K.S.A. 44-516. The Order of the Administrative Law Judge includes the following finding:

- "1. Administrative Law Judge pursuant to K.S.A. 44-516 appoints Dr. Steven Howell to examine and evaluate Claimant's injury. Dr. Howell to determine etiology of Claimant's condition, make diagnosis, restrictions, and treatment recommendations, if any."

Judge Potts Barnes did not order preliminary benefits of either temporary total disability compensation or medical treatment to be provided at the expense of the respondent. Instead, she ordered an IME designed to address the central issue in determining the compensability of the claim. This was an interlocutory order by the Administrative Law Judge. In effect, the preliminary hearing was continued until such time as an independent medical examination could be conducted by a neutral health care provider who would then give an opinion concerning the disputed issue of whether the claimant sustained a work-related injury. The Administrative Law Judge did not find this to be a compensable claim. Rather, she deferred making a preliminary ruling on that issue until after additional information was obtained through the ordered IME.

Respondent's issues raised in this appeal are listed and resolved as follows:

- (1) Whether the Administrative Law Judge exceeded her jurisdiction in granting the relief requested by the claimant at the preliminary hearing? The Administrative Law Judge did not grant the relief requested by the claimant. The claimant was seeking at least medical treatment; that benefit was not ordered. The Administrative Law Judge did order an IME pursuant to K.S.A. 44-516 and did not exceed her jurisdiction in doing so.

- (2) Whether the Administrative Law Judge exceeded her jurisdiction in finding that the claimant suffered an accidental injury? To the contrary, the Administrative Law Judge ordered the IME "to determine etiology of Claimant's condition" and diagnose the condition.
- (3) Whether the Administrative Law Judge exceeded her jurisdiction in finding the claimant's alleged injury arose out of and in the course of claimant's employment? Again, the Administrative Law Judge did not make a finding that claimant's alleged injury arose out of and in the course of claimant's employment. Her ordering of an independent medical examination pursuant to K.S.A. 44-516 did not constitute a finding concerning the compensability of the claim. That is made clear by the express language of the order.
- (4) Whether the Administrative Law Judge exceeded her jurisdiction in finding that the claimant gave timely notice to the respondent of the alleged injury? The question of whether claimant gave timely notice is not mentioned in the Order of the Administrative Law Judge. It cannot be assumed from the Order that it included a preliminary finding that the claimant gave timely notice to the respondent because the preliminary decision does not find the claim compensable for purposes of preliminary hearing or otherwise.

The November 14, 1995 preliminary Order is an interlocutory order. It is not a preliminary finding pursuant to K.S.A. 44-534a that the alleged injury to the employee is compensable. The Administrative Law Judge did not make a preliminary award of medical compensation and/or temporary disability compensation. Respondent's application for review is premature. The Appeals Board does not have jurisdiction to review the subject order and this appeal should, therefore, be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the application for review filed by respondent should be, and is hereby, dismissed and the November 14, 1995, preliminary Order of Administrative Law Judge Nelsonna Potts Barnes remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Chris A. Clements, Wichita, Kansas
Stephen A. McManus, Kansas City, Kansas
Leigh C. Hudson, Fort Scott, Kansas
Ernest Johnson, Kansas City, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director